

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LOUIS CHANDLER,

Petitioner,

Case No. 2:19-cv-263

v.

Honorable Paul L. Maloney

JACK KOWALSKI,

Respondent.

/

ORDER REGARDING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

This is a habeas corpus action brought by a state prisoner under 28 U.S.C. § 2254. On February 23, 2023, the Court entered a judgment denying the petition. (ECF No. 16.) The Court also denied Petitioner a certificate of appealability. (ECF No. 15.) Petitioner now has filed a notice of appeal. Petitioner is seeking leave to proceed on appeal *in forma pauperis*. (ECF No. 19.)

Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. The docketing fee for a case on appeal is \$500.00. *See* 28 U.S.C. § 1913; 6 Cir. I.O.P. 3; Court of Appeals Miscellaneous Fee Schedule § 1 (Sept. 1, 2018). In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has failed to pay the required fees.

A prisoner who is unable to pay the required filing fees may seek leave to appeal in a § 2254 action *in forma pauperis* pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure. *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Petitioner has substantially complied with Rule 24(a), which requires him to file a motion for leave to proceed *in forma pauperis* and an affidavit showing his inability to pay the required fees (as prescribed by Form 4

of the Appendix of Forms), his belief that he is entitled to redress, and a statement of the issue he intends to present on appeal. Petitioner paid the \$5.00 district court filing fee. He may proceed *in forma pauperis* on appeal if the documents establish his indigence unless the Court certifies his appeal would not be taken in good faith. 28 U.S.C. § 1915(a).

The Court did not certify that an appeal would not be filed in good faith. Indeed, the Court granted a certificate of appealability that demonstrates that an appeal can be filed in good faith.

But the affidavit Petitioner filed in support of his motion for leave to proceed on appeal *in forma pauperis* indicates that he has an income that is more than sufficient to permit him to pay the filing fee. Therefore, Petitioner may not proceed *in forma pauperis* on appeal without pre-paying or giving security for fees and costs. Fed. R. App. P. 24(a)(2).

If Petitioner wishes to proceed with his appeal, Petitioner is informed that within 28 days from the date of this order he must pay the \$505.00 appellate fee to the Clerk of this Court. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirements set forth in Fed. R. App. P. 24(a)(5). Petitioner is also notified that if he fails to pay the filing fee or to file the required documents, the Court of Appeals may dismiss Petitioner's appeal for want of prosecution.

Accordingly,

IT IS ORDERED that Petitioner's motion for leave to proceed *in forma pauperis* on appeal (ECF No. 19) is **DENIED**.

Dated: April 17, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to “Clerk, U.S. District Court” and must indicate the case number in which the payment is made.